



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE [REDACTED] Office: San Francisco

Date:

AUG 22 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §
212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was present in the United States without a lawful admission or parole on August 15, 1985. He was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on June 17, 1997. At that time the applicant was the beneficiary of a preference visa petition as the unmarried son of a naturalized U.S. citizen. The applicant seeks the above waiver in order to remain in the United States.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the applicant was not married at the time of the interview on June 17, 1997. The applicant returned to India and married his present wife on December 24, 1997. Counsel submits documentation in support of this assertion.

The record reflects the applicant's father, [REDACTED] filed a petition for alien relative in the applicant's behalf on September 23, 1996 seeking the applicant's classification as the unmarried son of a naturalized U.S. citizen. The applicant's father naturalized on August 29, 1996. That petition has not been adjudicated. The applicant filed an Application to Register Permanent Residence or Adjust Status on the same date supported by the necessary documentation. The applicant listed his marital status as unmarried. The applicant was interviewed by a Service officer on June 17, 1997 wherein he still listed his marital status as unmarried. The Service made an inquiry through the American Embassy in New Delhi, India, to determine whether a document inviting individuals to the auspicious occasion of the Marriage Ceremony between [REDACTED] and [REDACTED] on February 17, 1997 was authentic. An investigation was conducted and sworn statements were taken from persons who attended the ceremony and knew the participants. It was determined that the ceremony attended by about 200 persons was a marriage ceremony in Jalandhar and that the applicant married [REDACTED] on February 27, 1997.

On appeal, counsel states that the ceremony on February 17, 1997 was a lavish engagement ceremony according to Indian custom. Counsel submits copies of two versions of a "Programme" of the events of Tuesday, 18th February 1997 which includes: Ring Ceremony 12-00 Noon at Sawagat Palace.

This document only contradicts an original document in the record entitled Marriage Ceremony which includes events entitled [REDACTED] Path at 10:00 a.m. on February 15, 1997; [REDACTED] Path at 10:00 a.m., [REDACTED] at 11:00 a.m., [REDACTED] at 11:30 a.m.,

Guru [REDACTED] at 12:00 noon on February 17, 1997 and Departure of Barat (for Swagat Palace) at 8:00 a.m. on February 18, 1997.

Counsel also submitted a copy of a Marriage Certificate relating to the registration of the marriage between the applicant and [REDACTED] in Jalandhar City on December 24, 1997 and was registered on that same day.

The record is devoid of any explanation of the several events listed on the document entitled Marriage Ceremony or why that document differs from the Ring Ceremony document submitted on appeal. In some countries individuals participate in both a religious ceremony and a civil ceremony because only the civil ceremony is valid for immigration purposes. The record is silent as to any differences between such ceremonies in India.

The record contains documentation which reflects that the applicant was married at the time of his interview in June 1997 and documentation submitted on appeal does not overcome the documentation already in the record. Since first preference (unmarried) visas were available at that time of the interview and fourth preference (married) visas were not, the district director's conclusion that the applicant's testimony was a misrepresentation will be affirmed. No reason has been advanced as to why the applicant did not seek classification as an LB2 alien at the time his mother was notified that she had been accorded LB1 status with a priority date of February 27, 1992 and the applicant was 18 years old.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a) (6) (C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme

hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a § 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Soriano, 21 I&N Dec. 516 (BIA 1996, A.G. 1997).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1957 to the present time, and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and finally, significant conditions of health,

particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In Matter of Cervantes-Gonzalez, the Board also held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion. Matter of Tijam, Interim Decision 3372 (BIA 1998), followed. The Board declined to follow the policy set forth by the Commissioner in Matter of Alonso, 17 I&N Dec. 292 (Comm. 1979); Matter of Da Silva, 17 I&N Dec. 288 (Comm. 1979), and noted that the United States Supreme Court ruled in INS v. Yueh-Shao Yang, 519 U.S. 26 (1996), that the Attorney General has the authority to consider any and all negative factors, including the respondent's initial fraud.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The court held in INS v. Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In a statement the applicant's father suggests that he and the applicant's mother will suffer extreme hardship if the applicant returns to India. The father states that the applicant takes his mother shopping, to the doctor, and takes care of all business matters relating to their apartment, bills and repairs. The father states that they had planned to live with their son and take care of them. The father states that the applicant's sister is still in India waiting for the priority date of her visa petition to become current.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relatives would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.